

SERVED: August 4, 1994

NTSB Order No. EA-4226

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of July, 1994

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| In the matter of |) | |
| |) | Docket Unassigned |
| JET POWER, INC. |) | |
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OPINION AND ORDER

Respondent has appealed from the order issued by Administrative Law Judge William E. Fowler, Jr., on September 9, 1993.¹ In his order, the law judge dismissed an appeal filed by Jet Power, Inc. challenging an Airworthiness Directive (AD) issued by the Administrator in 1989. That AD, Number 89-22-07, by its terms was directed solely to identified engines that had been approved for return to service by Jet Power. The AD required that the engines be taken out of service until specified

¹The order is attached. It incorrectly designates the Administrator as the complainant and Jet Power the respondent, as Jet Power had done in its original submissions. Although Jet Power seeks correction to designate itself as appellant and the Administrator as appellee, we prefer the Administrator's formulation and use it here.

overhaul was performed.

Jet Power initially appealed the AD to Federal District Court. Upon the District Court's dismissal of the case for lack of jurisdiction, Jet Power filed its appeal with the Board.² We agree with the law judge's conclusion that we lack jurisdiction to hear Jet Power's complaint.

Our authority to review FAA actions derives from Sections 501, 602, 609, and 611 of the Federal Aviation Act of 1958 (FA Act), codified at 49 U.S.C. App. 1401, 1422, 1429, and 1431.³ Our rules of practice at 49 C.F.R. Part 821, also cited by Jet Power, are intended simply to reflect our statutory authority and cannot in any way expand or modify it.

Section 501 of the FA Act grants us authority to review the Administrator's revocation of an aircraft certificate of registration. Section 602 grants us authority to review the Administrator's denial of an application to issue or renew an airman certificate. Under Section 609, we may review orders of the Administrator "amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production

²Jet Power's initial appeal to the Board attached the decision by the United States District Court for the Southern District of Florida, Case No. 92-1455-Civ-Moore. The court ruled that jurisdiction to review this FAA order lay with the Circuit Courts of Appeals. Jet Power does not indicate that it has appealed that ruling.

³Modifications enacted in the FAA Civil Penalty Administrative Assessment Act of 1992, P.L. No. 102-345, extend our review beyond certificate revocation and suspension to the imposition of civil penalties; they contain no language affecting this inquiry.

certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate." Section 611 extends Section 609 authority to certificate actions involving sonic boom or aircraft noise standards.⁴

It is obvious from this review that jurisdiction over the AD must derive, if at all, from Section 609, and Jet Power so argues. A portion of Section 609(a) reads "[a]ny person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the Board. . . ." Jet Power thus argues that, because the FAA's action "affected" its repair station certificate, we have jurisdiction to review the merits of the FAA's action in issuing the AD.

Even assuming Jet Power's certificate has been "affected" (an issue we do not reach), Jet Power's analysis omits other language in subparagraph (a) defining the phrase "such an order" as an order "amending, modifying, suspending, or revoking, in whole or in part" a certificate. Issuance of AD 89-22-07 is not an order amending, modifying, suspending, or revoking, in whole or in part any certificate issued to Jet Power. Jet Power's future actions under its certificate are in no way affected by the AD. Were we to accept the broad interpretation Jet Power

⁴The Independent Safety Board Act of 1974, at Section 304(a)(9), repeats these FA Act references (although its reference to Section 501 is incorrectly limited).

offers, we would be expanding our authority well beyond the clear intent of the statute. Any FAA rulemaking involving the Federal Aviation Rules at Title 14 of the Code of Federal Regulations has the potential to affect the exercise of existing certificates. Moreover, we have consistently held that we do not review the underlying merits of FAA's substantive rulemaking. See, e.g., Administrator v. Langley, 3 NTSB 1218 (1978).

We do not have inclusive authority over FAA activities. Rather, our authority is relatively limited in comparison to the broad range of activities delegated to the FAA. Jet Power's argument that we should review the FAA's action because the FAA disguised and mislabeled its action as an AD demonstrates only that the FAA has various options available to it for use in its aviation safety regulation. The inherent fallacy in the argument that AD action and certificate action should be treated the same is that, had certificate action been taken against Jet Power, such action would have done nothing to safeguard the users of engines that the FAA believed were repaired using unacceptable practices.

That the District Court found the AD to be an order of the Administrator is of no assistance to Jet Power in obtaining Board review. As discussed, we can find no provision under which we may exercise jurisdiction in this matter. Although Jet Power argues against a result that offers it no avenue of review, such a result is not inherently disfavored. See, e.g., Adams v. FAA, 1 F.3d 955 (9th Cir. 1993). And, in any case, the District Court

found that review was available to Jet Power in the court of appeals pursuant to 49 U.S.C. App. 1486(a).⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. Jet Power's appeal is denied; and
2. The initial decision is affirmed.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁵Jet Power argues that its petition to us is timely because it was filed within 10 days of the District Court's order. Even were we to have jurisdiction here, we fail to see any relationship between the two. Our rules, which we strictly construe, see Administrator v. Hooper, NTSB Order EA-2781 (1988), require that a notice of appeal be filed within 20 days of the Administrator's order.